

SUPERINTENDENT CONTRACT

THIS SUPERINTENDENT CONTRACT (“Agreement”) is made and entered on _____, 20____ to be effective as of July 1, 2020, by and between Adams-Arapahoe School District 28J, State of Colorado (“District”), acting through its Board of Education (the “Board”), and D. Rico Munn (“Superintendent” or the “Superintendent of Schools”) (each a “Party” and collectively, the “Parties”).

WITNESSETH:

WHEREAS, the Parties desire to enter into a written contract to describe their relationship and to serve as the basis for effective communication between them in the fulfillment of their governance and administration of the educational and operational programs of the District;

WHEREAS, the Board at a regular meeting held May 7, 2013, approved the appointment of the Superintendent and entered into an agreement setting out the terms and conditions of employment for the Superintendent (the “2013 Agreement”); and

WHEREAS, on January 7, 2016 the Parties entered into an extension of the 2013 Agreement (the “2016 Agreement”); and

WHEREAS, on April 17, 2018 the Parties entered into an extension of the Agreement; and

WHEREAS, the Parties intend to extend the 2018 Agreement; and

NOW, THEREFORE, the Parties, in consideration of the terms, conditions, and covenants set forth herein, agree as follows:

1. TERM.

The District hereby employs and the Superintendent hereby accepts employment as Superintendent of Schools of the District for an additional three (3) year term commencing July 1, 2020, and ending June 30, 2023, subject to the provisions of Section 8 of this Agreement. This Agreement is intended to be an extension of the 2018 Agreement, between the District and Superintendent and no break in service or employment shall occur as a result of this extension. To the extent required by applicable law, the District will irrevocably pledge reserves of the District in an amount sufficient for the payment of any obligation under Section 8.D of this Agreement. During the month of February 2023, the Board shall determine whether to enter into a new agreement or to extend this Agreement with the Superintendent. In the absence of action by the Board, this Agreement will expire in accordance with its terms.

2. PROFESSIONAL RESPONSIBILITIES OF SUPERINTENDENT.

A. Duties. The Superintendent shall perform the usual and necessary duties and tasks of the chief administrative officer of a school district, subject to the direction and control of the Board. The Superintendent shall have charge of the administration of the schools under and subject to the direction and approval of the Board and shall

administer the District according to Board policy and the requirements, directives, regulations, and guidelines of the Board. The Superintendent shall also comply with all directions of the Board given in its corporate capacity, whether by consensus or majority vote. The Superintendent shall be the chief administrative officer of the District and shall: (i) assign and direct teachers and other employees of the District under his supervision; (ii) organize, reorganize, and arrange the administrative and supervisor staff, including instruction and business affairs, as best serves the District, all subject to consultation with and the approval of the Board; (iii) timely suggest regulations, rules, and procedures deemed necessary for the best operations of the District; and (iv) in general, perform all duties incident to the office of superintendent of schools and such other duties as may be prescribed by the Board.

B. Policy Governance. The Parties agree the relationship between the Superintendent and the Board shall be governed by the principles set forth in Appendix A (the “Policy Governance”). Should the Board elect to materially alter the Governance Policy, such changes may be deemed by the Superintendent a Unilateral Termination by the District as such term is defined in Section 8.D except that any severance paid will be reduced by ten percent (10%). The Parties agree that a good faith discussion regarding a Unilateral Termination by the District under this section should take place prior to the Superintendent exercising any rights under this Section. Therefore, the Superintendent will provide the Board President with a written notice of his concern that the Board has materially altered its governing principles as described above thirty (30) days prior to the Superintendent terminating his employment with the District. During this thirty (30) day period the Parties will enter into good faith discussions intended to resolve the Parties’ governance concerns.

C. Services. This Agreement is intended by the Parties to be a full-time contract and the Superintendent shall devote his attention to the functions of Superintendent at all times during the term of this Agreement. It is not contemplated that the Superintendent will ordinarily perform services on weekends or legal holidays. However, it is intended that the Superintendent shall remain available on such days to meet the responsibilities of superintendent of schools on such occasions as are necessary.

D. Relationship to Board. The Board shall promptly refer all criticisms, complaints, and suggestions that come to its attention to the Superintendent for study and recommendation unless the Board determines that the welfare of the District, its students, or its staff requires action inconsistent with this provision. The Superintendent shall have the obligation, unless excused or on leave or vacation, to attend all Board meetings. The Board shall have the option to meet in executive session without the Superintendent being present.

E. Outside Activities. The Superintendent shall devote time, attention, and energy to the business of the District. Participation in outside activities by the Superintendent shall be subject to advance approval by the Board in its reasonable discretion where

the time requirements for such activities are anticipated to be substantial (e.g., conferences that require the Superintendent's absence from the District for three (3) or more regular business days); provided, however, that such consent shall not be unreasonably withheld by the District.

F. Incorporation of Laws. Notwithstanding and not as a modification of any other reference herein, this Agreement is subject to and includes all applicable laws of the federal and state governments and, to the extent consistent with the term, salary, fringe benefits, and termination provisions herein, all duly adopted policies, rules, and regulations of the District that are in effect or become in effect during the term of this Agreement. The Board specifically reserves the right to change such policies, rules, and regulations at any time without prior notice; provided, however, such changes shall not affect the term, salary, fringe benefits, or termination provisions of this Agreement during its term.

3. SALARY.

A. Base. The District shall pay the Superintendent for his services an annual salary of \$267,422, subject to salary adjustments as set forth in Section 3.B below. Salary shall be paid in arrears in equal monthly installments, commencing with the regular payday for other District employees for July 2018. Deductions authorized by law, Board policy, or at the direction of the Superintendent may be made from the monthly installments of salary due to the Superintendent.

B. Adjustments. The Superintendent's salary may be increased from time to time, by written addendum to this Agreement signed by both Parties. Beginning with the fiscal year 2020-21, the Superintendent's base salary shall be adjusted consistent with the manner in which Administrative and Professional/Technical ("AP/T") staff members in the District receive pay raises. Specifically, if the Superintendent's evaluation by the Board indicates the preponderance of scores are "Consistently Meets," he shall receive the maximum percentage annual increase available to AP/T staff members; if the preponderance of scores are "Inconsistently Meets," he shall receive the mid-level percentage annual increase available to AP/T staff members; and if the preponderance of scores are "Rarely Meets" or "Does Not Meet," he shall receive no annual increase. The summary report shall be made available to the Superintendent.

C. Bonus. In addition to any other compensation set forth in this Agreement, the Superintendent shall be entitled to a bonus of up to ten percent (10%) of his adjusted base salary for each year the District improves its District Performance Framework accreditation category assigned by the Colorado Department of Education. Currently the five District accreditation categories are: (i) Accredited with Distinction; (ii) Accredited; (iii) Accredited with Improvement Plan; (iv) Accredited with Priority Improvement Plan; and (v) Accredited with Turnaround Plan.

If during the term of this agreement the labels assigned to each category shall change, the Parties shall evaluate the Superintendent based on the new labels so

long as such labels are substantially similar to the labels above. In determining the bonus, the Board will evaluate how the Superintendent's efforts have impacted the improvement as opposed to inherent structural changes to the accreditation process itself.

4. FRINGE BENEFITS.

- A. Vacation.** Within the Superintendent's work year of 261 workdays, the Superintendent shall be entitled to twenty-two (22) workdays of annual vacation, exclusive of legal holidays for District employees as established by the Board. Vacation days accumulated but not used at the end of each year of the term may be carried over to the following year; provided, however, the total accumulation may not exceed forty-five (45) work days. At the option of either the Superintendent or the Board, accumulated vacation days may be paid prior to the end of the any year of the term and, if not sooner paid, will be paid upon termination of employment with the District at the per diem salary rate in effect at the time of purchase. For purposes of this Agreement, "per diem salary rate" means the total of the then-current Salary under Section 3.A divided by 261. Vacation leave is accrued proportionately to the time of service in any given year of the term, but the entire yearly allowance may be utilized at any time during a year of the term, subject to reimbursement to the District if leave is taken in excess of the proportion finally accrued. Vacation shall be taken at such times as agreed upon by the Board and Superintendent; provided, however, that the Board shall not unreasonably withhold its agreement.
- B. Sick Leave.** The Superintendent shall accrue health and personal leave at the same rate as other AP/T employees of the District. This leave will be provided and administered consistent with applicable Board policies. Health leave and personal leave are accrued proportionately to the time of service in any given year, but the entire yearly allowance may be utilized at any time during the year, subject to reimbursement to the District if leave is taken in excess of the proportion finally accrued. Health leave may be taken at the absolute discretion of the Superintendent so long as consistent with Board Policy GCCAA.
- C. Memberships.** The District shall pay the annual dues and fees for the Superintendent to maintain membership in the Colorado Association of School Executives, the American Association of School Administrators, Rotary International, and such other local service clubs, business, or civic groups as are reasonably approved by the Board.
- D. Insurance.** At the District's expense, the Superintendent shall be provided single coverage health, dental, and vision insurance under the District's then-current plan. The Superintendent shall also be provided with standard term life insurance and long-term disability insurance under the policies carried or sponsored by the District, with such coverage being paid for entirely by the District.
- E. Annual Physical.** The District shall pay for the Superintendent to have a regular annual physical examination by a physician of his choice to a maximum of \$400.00

per year (if not covered by health insurance). Upon request, the Superintendent shall provide the President of the Board with a summary report of fitness for duty following such annual physical examination.

F. Professional Meetings. The Superintendent may attend appropriate professional meetings at the local, state, and national level, the reasonable expenses of which shall be paid by the District, subject to prior consultation with and approval by the Board.

G. Personal Automobile and Cell Phone Use, and Expense Reimbursement. Consistent with the policies and procedures applicable to other AP/T employees, the District will not reimburse the Superintendent for business use of his own automobile or his personal cell phone. The Superintendent shall be reimbursed for reasonable expenses for meals and incidentals necessarily incurred in carrying out his official duties and in promoting the activities of the District. The District shall provide the Superintendent a District-owned iPad or comparable tablet device selected by the Superintendent, and a laptop and printer/fax machine for home use. Upon the effective date of the termination of his employment by the District, for whatever reason, the Superintendent agrees to return to the District all District property including, but not limited to, computers, files, keys, documents, records, notebooks, and similar repositories of information, and personal files, if any, maintained by the Superintendent that, in any manner, pertain to District personnel, business matters or affairs, in the possession of the Superintendent, whether prepared by him or by others; provided, however, that the Superintendent may keep copies of any speeches, presentations or other published writings he gave or authored during the term of the Agreement (collectively, the "Personal Works") and the Superintendent shall receive a perpetual, irrevocable, royalty free, fully transferable, sub-licensable, worldwide, license to the Personal Works; provided, further, that the Superintendent shall not be required to return the iPad or comparable tablet device selected by the Superintendent.

H. Other Benefits. The Superintendent shall receive the same fringe benefits as are accorded other AP/T employees of the District from time to time. Any benefit, right, or obligation not specifically set forth in the Agreement shall be governed by the policies of the Board relating to administrative personnel at the director or assistant superintendent level.

5. PROFESSIONAL LIABILITY.

A. Hold Harmless. The District agrees that, to the extent permitted by law, it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings at law or in equity (specifically excluding, however, any demands, claims, suits, actions, or legal proceedings brought against the Superintendent by or on behalf of the District, and any criminal proceedings brought against the Superintendent), in his individual capacity or in his official capacity as agent and employee of the District, provided

the incident giving rise to the claim arose while the Superintendent was acting within the scope of his employment and not willfully or wantonly.

B. Provision of a Defense. The obligations of the District pursuant to this Section 5 shall be conditioned on (i) notification to the District by the Superintendent of any claim within a reasonable time after the Superintendent knew of or reasonably could have been expected to know of a claim; (ii) cooperation by the Superintendent with the District and legal counsel in defending the claim; and (iii) the Superintendent not comprising or settling the claim without the express consent of the Board. If, in the good faith opinion of the Superintendent, a conflict concerning the defense of such claim between the legal position of the Superintendent and the legal position of the District, the Superintendent may engage his own counsel on issues where the Superintendent could be subject to personal liability.

C. Reimbursement. In the event the District has provided a defense pursuant to this Section 5, and a court having final jurisdiction over the matter determines that the act or omission of the Superintendent that resulted in liability did not occur during the performance of his duties hereunder and within the scope of his employment or that the act or omission was willful or wanton, the Superintendent shall reimburse the District for reasonable costs of such defense and any final judgment or award paid on his behalf by the District.

D. No Individual Liability. In no event shall individual Board members be individually or collectively liable or responsible to the Superintendent for defending or indemnifying the Superintendent against such demands, claims, suits, actions, and legal proceedings where such obligations would not otherwise be imposed.

6. GOALS AND OBJECTIVES.

Prior to October 1 of each year of the term of this Agreement, the Board and the Superintendent shall meet to establish goals and objectives for the Superintendent for the school year. These goals and objectives shall be reduced to writing, shall be provided to the Superintendent, and shall be among the criteria by which the Superintendent is evaluated as herein provided.

7. EVALUATION.

The Board will meet with the Superintendent at least twice during each year of the term of the Agreement either as a separate meeting or part of a regular meeting to discuss progress on the goals and objectives and to review how the relationship is proceeding. In the last year of the term of the Agreement, the mid-year meeting shall include a discussion of the potential for the Superintendent to continue in the position after the initial or any subsequent term of the Agreement. The second meeting may be for the purpose of the annual evaluation as provided herein. The Board will evaluate and assess in writing the performance of the Superintendent during the term of this Agreement pursuant to any applicable District evaluation procedures and state law. The written evaluation shall

include strengths and weaknesses and may include suggestions or an action plan addressing any major concerns as determined by the Board. At the conclusion of the evaluation, the Board and Superintendent shall meet for the purpose of discussing the evaluation. At the Superintendent's or the Board's request, the meetings provided for herein will be held in executive session. Nothing in this evaluation section shall be deemed to be a prerequisite to or condition of dismissal, termination, or other personnel action except as otherwise provided herein.

8. TERMINATION OF AGREEMENT.

- A. **Mutual Agreement.** This Agreement may be terminated by mutual agreement of the Parties.
- B. **Disability of Superintendent.** Subject to applicable state and federal law, including, but not limited to the Americans With Disability Act, the Board may terminate this Agreement by written notice to the Superintendent at any time after the Superintendent has exhausted any accumulated sick leave and such other leave as may be available and has been absent without pay from his employment for whatever cause for an additional continuous period of sixty (60) days. All obligations of the District shall cease upon such termination.

If a question exists concerning the ability of the Superintendent to perform the essential functions of his position with reasonable accommodation as required by law, the District may require the Superintendent to submit to a medical examination, to be performed by a physician. The District and the Superintendent shall mutually agree upon the physician who shall conduct the examination. If the Parties are unable to mutually agree upon a physician, a physician shall be designated by the President of the Board. The examination shall be performed at the expense of the District. The physician shall limit his or her report to the issue of whether the Superintendent has a continuing physical or mental disability which prohibits him from performing the essential functions of his position with reasonable accommodation.

- C. **Discharge for Cause.** Throughout the term of this Agreement, the Superintendent shall be subject to discharge for Cause as defined herein. For purposes of this Agreement, "Cause" shall be defined as incompetency, neglect of duty, immorality, unsatisfactory performance, insubordination, the conviction of a felony or the acceptance of a guilty plea, a plea of nolo contendere, or a deferred sentence for a felony, or other good and just cause, which includes, but is not limited to, a material breach of this Contract. However, the Board shall not arbitrarily and capriciously dismiss the Superintendent.

In the event the Board believes that it has cause for dismissal as defined herein, it shall give the Superintendent: (i) three (3) business days advance written notice of the alleged cause from those listed above (the "Notice of Dismissal"); (ii) a summary of the evidence including the names of witnesses and copies of any documents supporting the Notice of Dismissal, reasonable advance notice of a hearing; and (iii) a hearing that satisfies the requirements of due process. At the

option of the Superintendent made by written notice within five (5) business days after receipt of the Notice of Dismissal, the hearing shall be conducted either: (i) before the Board; or (ii) before an impartial hearing officer (the “Hearing Officer”) selected jointly by the Superintendent and the President of the Board. The Hearing Officers shall be an individual with experience in the conducting of hearings and with experience in labor or employment matters. The Hearing Officer shall be selected no later than ten (10) days following receipt by the President of the Board of the Superintendent’s notice of election to have the matter addressed by a Hearing Officer. If the President of the Board and the Superintendent fail to agree on the selection of a Hearing Officer, they shall request assignment of an administrative law judge by the Colorado department of personnel to act as the Hearing Officer within the timeline provided herein.

The hearing shall be held within thirty (30) days following the selection of the Hearing Officer. The Hearing Officer may receive or reject evidence and testimony, administer oaths, and, if necessary, subpoena witnesses. At any hearing, the Superintendent shall have the right to appear in person with or without counsel, to be heard and to present testimony of witnesses and all evidence bearing upon his proposed dismissal for Cause, and to cross-examine witnesses. If the Superintendent chooses to be accompanied by legal counsel at a hearing, his legal expenses shall be paid by him. All District records pertaining to the Superintendent shall be made available for the use of the Hearing Officer and the Superintendent.

At the hearing, the representative of the Board shall have the burden of proving that the dismissal of the Superintendent for Cause was for the reasons given in the Notice of Dismissal. The hearing may be closed at the option of either Party. An audiotaped record shall be made of the hearing, and, if the Superintendent files a civil action for review of the decision of the Hearing Officer, the Superintendent and the District shall share equally in the cost of transcribing the record. In the event of a legally sufficient dismissal for Cause hereunder, the Superintendent shall not be entitled to any salary or other benefits (except payment for accrued vacation and any other previously vested benefits) beyond the effective date of his termination and the District shall be relieved from further obligations hereunder.

The Parties agree that the decision of the Hearing Officer shall be of an advisory nature and shall not preclude either Party from filing a civil action in state or federal court with respect to the dismissal of the Superintendent for Cause.

D. Unilateral Termination by the District. The Board may unilaterally terminate this Agreement before the expiration of the term (“Unilateral Termination by the District”) upon payment of a severance within fifteen (15) days of the unilateral termination as follows: (i) \$200,000 if terminated before June 30, 2021; (ii) \$150,000.00 if terminated after July 1, 2021, and before June 30, 2022; or (iii) if terminated after July 1, 2022, the lesser of \$100,000.00 or the remainder of the base salary due for the term July 1, 2022, through June 30, 2023. No other amount or benefit shall be due or paid as a consequence of such unilateral termination.

- E. **Death of the Superintendent.** This Agreement shall automatically terminate upon the death of the Superintendent; provided, however, that any compensation or benefits earned, including but not limited to salary, unused vacation leave, bonuses or life insurance benefits, shall be paid to the Superintendent's spouse or heirs.
- F. **Unilateral Termination by Superintendent.** Except for a termination for Cause as set forth in Section the Superintendent may unilaterally terminate this Agreement upon six (6) months' prior written notice to the Board (the "Notice Period"), during the Notice Period the Superintendent shall continue to perform his obligations to the District. In the event the Superintendent fails to provide the required notice and perform his duties during the Notice Period, the Superintendent shall pay damages to the District, and the Board thereof shall be authorized to collect or withhold damages from compensation due or payable to the Superintendent, in an amount equal to the lesser of: (i) the ordinary and necessary expenses of the Board to secure the services of a suitable replacement chief administrative officer; or (ii) one-twelfth (1/12) of the annual salary specified in this Agreement.

9. MISCELLANEOUS.

- A. **Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision. In case any term of this Agreement will be held invalid, illegal or unenforceable, in whole or in part, the validity of any of the other terms of this Agreement will not in any way be affected thereby.
- B. **Binding Effect.** This Agreement is one for personal services to be provided by Superintendent only and may not be assigned. Any compensation due and payable to him under this Agreement may be paid to his legal representative in the event of his death.
- C. **Alternative Dispute Resolution.** In the event of any dispute or claim arising under or related to this Agreement, except for Cause as provided in Section 8.C, the Parties shall use their best efforts to settle such dispute or claim through good faith negotiations with each other. If the dispute or claim is not settled through negotiations within fifteen (15) days after the earliest date on which one Party notifies the other Party in writing of his or its desire to attempt to resolve such dispute or claim through negotiations, then the Parties agree to attempt in good faith to settle such dispute or claim by mediation conducted under the auspices of the American Arbitration Association ("AAA") in Denver, Colorado pursuant to its National Rules for the Resolution of Employment Disputes. If AAA is no longer in existence, or if the Parties agree otherwise, then under the auspices of a recognized, established mediation service within the State of Colorado. The mediation shall be conducted within thirty (30) days following either Party's written request. If the dispute or claim is not settled through mediation, then either Party may initiate a civil action and/or pursue other remedies as may be available at law or equity.

- D. **Binding Law.** This Agreement and the rights and obligations of the Parties shall be interpreted and construed in accordance with the laws of the State of Colorado.
- E. **Entire Agreement.** Subject to the provisions of Section 2 of this Agreement, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the Parties with respect thereto. The Parties acknowledge and agree that neither Party has entered into this Agreement based upon any representation or warranty not set forth in writing herein.
- F. **Survival.** Except as otherwise provided herein, Section 4.G, Section 5, Section 8.E, and Section 9 shall survive the termination of this Agreement.
- G. **Waiver.** The waiver by either Party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any prior or subsequent breach thereof.
- H. **Notices.** Any notices required or permitted to be given hereunder shall be sufficient if in writing, and if delivered by hand, by courier, by confirmed facsimile, or sent by certified mail, return receipt requested, prepaid, to the addresses set forth within or such other address as either Party may from time to time designate in writing to the other and shall be deemed given as of the date of the delivery if delivered by hand, by confirmed facsimile or by courier or, if mailed, three (3) days after the date of mailing.
- I. **Modification.** Subject to the provisions of Section 2 of this Agreement, no amendment or alteration of the terms of this Agreement shall be valid unless made in a writing signed by both Parties to this Agreement specifically referring to this Agreement.
- J. **Counterparts.** This Agreement may be executed in one or more counterparts which shall be deemed executed originals.

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IN WITNESS WHEREOF, the District has caused this Agreement to be approved on its behalf by duly authorized officers of the Board and the Superintendent has approved this Agreement effective on the day and year first above written.

**ADAMS-ARAPAHOE SCHOOL DISTRICT
28J**

By: _____

Marques Ivey
President, Board of Education
15701 E. 1st Avenue
Aurora, CO 80011

ATTEST:

Debra E. Gerkin, Secretary

D. Rico Munn

Date

Appendix A

Policy Governance

The Parties agree the relationship between them shall be governed by the following:

Policy Category: Board-Superintendent Relationship

Policy Name: 2.3 Authority of the Superintendent

The Board will instruct the Superintendent through written policies that prescribe District outcomes (District Goals) to be achieved and proscribe District circumstances to be avoided (Executive Limitations), allowing the Superintendent to use any reasonable interpretation of these policies within those District Goals and Executive Limitations.

1. The Board will develop policies instructing the Superintendent to achieve specified results for specified recipients at a specified cost and/or priority. These policies will be developed systematically from the broadest, most general level to more defined levels and will be called “District Goals” policies. All issues that are not “District Goals” issues are defined here as means issues.

2. The Board will develop policies that limit the latitude the Superintendent may exercise in choosing the District or staff means. These policies will be developed from the broadest, most general level to more specific or narrow levels, and they will be called “Executive Limitations” policies. The Board will avoid prescribing District or staff means delegated to the Superintendent, (i.e., the Board will avoid telling the Superintendent or staff what to do or how to do it, particularly if that direction is intended to improve the accomplishment of District Goals).

3. As long as the Superintendent uses any reasonable interpretation of the Board’s District Goals and Executive Limitations policies, the Superintendent is authorized to establish all further policies, make all decisions, take all actions, establish all practices, and pursue all activities. Such decisions of the Superintendent shall have the full force and authority as if decided by the Board. All prescriptions or proscriptions contained within any higher or more general level of District Goals or Executive Limitations policy apply to all lower or more specific policies within that same category of policies.

4. The Board may change its District Goals and Executive Limitations policies, thereby shifting the boundary between Board and Superintendent domains. By doing so, the Board changes the latitude of choice given to the Superintendent. As long as any particular delegation is in place, the Board will respect and support the Superintendent’s choices.